

**Consideration of request for preliminary adoption of new rules to assist with implementation of IC 14-39 governing carbon dioxide transmission pipelines; Administrative Cause No. 12-185G**

IC 14-39 was enacted following the 2011 Session of the Indiana General Assembly with passage of P.L. 150-2011. The subject has been governed by temporary rules at LSA Document #11-443(E) and LSA Document LSA #12-502(E), the latter of which will expire August 15, 2013. To date, there have been no applications filed on behalf of carbon dioxide pipeline operators seeking a certificate of authority from the Department of Natural Resources since the temporary rules took effect. The content of the proposed rules for carbon dioxide pipeline regulation are nearly identical to the temporary rules and closely follow the provisions in IC 14-39.

The proposed rule directs the Division of Oil and Gas to administer IC 14-39 and prescribes standards which carbon dioxide pipeline operators must follow to obtain a certificate of authority from the Department of Natural Resources to operate a pipeline in Indiana. An applicant must demonstrate it has the requisite financial, managerial, and technical ability to construct and operate the pipeline including prior experience. A company must have contracts to transport carbon dioxide with at least one (1) producer of carbon dioxide located in Indiana as well as agreements with end users of the carbon dioxide. Included are provisions for public notice and public participation by persons who may be affected by the pipeline operations and coordination of any necessary approvals with the Pipeline Safety Division of the Indiana Utility Regulatory Commission. Upon receipt of a certificate of authority under IC 14-39, the pipeline operator is granted authority to: (1) construct and operate a carbon dioxide transmission pipeline; (2) use, occupy, and construct pipeline facilities in any designated public right-of-way for the construction and operation of the pipeline; and (3) take and acquire possession by eminent domain any property or interest in property for construction, maintenance or operation of the pipeline.

The Division of Oil and Gas recommends the Natural Resources Commission give preliminary adoption to proposed new 312 IAC 29, to govern carbon dioxide transmission pipelines, as attached.

**TITLE 312 NATURAL RESOURCES COMMISSION**

**Proposed Rule**  
LSA Document #12-

**DIGEST**

Adds 312 IAC 29 to assist with implementation of IC 14-39 governing carbon dioxide transmission pipelines. The subject was previously governed by temporary rules at LSA Document #11-443(E) and LSA Document LSA #12-502(E). Effective August 20, 2013.

**312 IAC 29**

SECTION 1. 312 IAC 29 IS ADDED TO READ AS FOLLOWS:

**Rule 1. Application and Administration**

**312 IAC 29-1-1 Application to carbon dioxide transmission pipelines**

**Authority:** IC 14-10-2-4

**Affected:** IC 14-39

Sec. 1. This article assists in the implementation of IC 14-39 with respect to any carbon dioxide transmission pipeline. *(Natural Resources Commission; 312 IAC 29-1-1)*

**312 IAC 29-1-2 Administration**

**Authority:** IC 14-10-2-4

**Affected:** IC 14-39

Sec. 2. (a) Except as provided in IC 14-39-1-7 through IC 14-39-1-9, the division shall administer IC 14-39 and this article.

(b) The division director or a designate of the division shall take any action that is appropriate under subsection (a). *(Natural Resources Commission; 312 IAC 29-1-2)*

**Rule 2. Definitions**

**312 IAC 29-2-1 Applicability of definitions**

**Authority:** IC 14-10-2-4

**Affected:** IC 14-39

Sec. 1. The definitions in IC 14-39, 312 IAC 1, and this rule apply throughout this article. *(Natural Resources Commission; 312 IAC 29-2-1)*

**312 IAC 29-2-2 "Certificate of authority" defined**

**Authority:** IC 14-10-2-4

**Affected:** IC 14-39

Sec. 2. "Certificate of authority" refers to a license under IC 14-39-1-6 and this article to operate a carbon dioxide transmission pipeline in Indiana. *(Natural Resources Commission; 312 IAC 29-2-2)*

**312 IAC 29-2-3 "Division" defined**

**Authority:** IC 14-10-2-4

**Affected:** IC 14-39

Sec. 3. "Division" refers to the division of oil and gas established under IC 14-9-4-1(15). *(Natural Resources Commission; 312 IAC 29-2-3)*

**312 IAC 29-2-4 "Division director" defined**

**Authority:** IC 14-10-2-4

**Affected:** IC 14-39

Sec. 4. "Division director" refers to the director of the division. *(Natural Resources Commission; 312 IAC 29-2-4)*

**312 IAC 29-2-5 “Supercritical state” defined**

**Authority:** IC 14-10-2-4

**Affected:** IC 14-39

Sec. 5. “Supercritical state” refers to carbon dioxide that is compressed to the critical point at which distinct liquid and gas phases do not exist. Carbon dioxide is above its critical point at temperatures exceeding three-hundred four and one-tenth degrees Kelvin (304.1°K) and pressures above seven and thirty eight one-hundredths megapascals (7.38 PPa). (*Natural Resources Commission; 312 IAC 29-2-5*)

**Rule 3. Certificates of authority**

**312 IAC 29-3-1 Duties of division regarding certificates of authority**

**Authority:** IC 14-10-2-4

**Affected:** IC 14-39

Sec. 1. The division shall:

(1) Develop forms reasonably required for use by a carbon dioxide transmission pipeline company in applying for a certificate of authority.

(2) Ensure an application for a certificate of authority is complete and satisfied the requirements of IC 14-39-1-5(a), including the information required in section 2 of this rule. The division shall return an application to the company if the division determines an application is incomplete or inaccurate, informing the applicant in writing of the right to re-file an application that is complete and accurate.

(3) Exercise necessary caution to avoid public disclosure of trade secrets or confidential and proprietary information designated under IC 14-39-1-5(a).

(4) Ensure public notice and public participation requirements of IC 14-39 are met with respect to any application for a certificate of authority, including the conduct of a public information meeting under IC 14-39-1-4(d) and section 3 of this rule. (*Natural Resources Commission; 312 IAC 29-3-1*)

**312 IAC 29-3-2 Application for a certificate of authority**

**Authority:** IC 14-10-2-4

**Affected:** IC 14-39

Sec. 2. (a) Before exercising any rights under IC 14-39-1-7, a company must obtain a certificate of authority from the division under IC 14-39-1-4 and this article.

(b) A company seeking a certificate of authority must complete an application on forms prescribed by the division that demonstrate as a minimum:

(1) The company has the financial, managerial, and technical ability to construct, operate, and maintain a carbon dioxide transmission pipeline in Indiana.

(2) The company has the requisite experience to construct, operate, and maintain a carbon dioxide transmission pipeline.

(3) The company has contracted to transport carbon dioxide by pipeline in Indiana with:

(A) at least one (1) producer of carbon dioxide located in Indiana; and

(B) unless all of the carbon dioxide to be transported in the proposed carbon dioxide transmission pipeline is for the company’s own use or account, at least one (1) end user of carbon dioxide.

(4) The company has provided documentation to the division showing the proposed length, diameter, and location of the proposed carbon dioxide transmission pipeline in Indiana.

(5) The company would construct, operate, and maintain the proposed carbon dioxide transmission pipeline under local, state, and federal laws, including federal and state safety regulations and rules governing the construction, operation, and maintenance of carbon dioxide transmission pipelines, to ensure the safety of pipeline employees and the public.

(6) The company has either:

(A) entered into an agreement with the Indiana utility regulatory commission concerning the mitigation of agricultural impacts associated with construction of the proposed carbon dioxide transmission pipeline; or

(B) signed a statement that the applicant agrees to use, in connection with the construction of the proposed carbon dioxide transmission pipeline, the guidelines adopted under IC 8-1-22.6-8 by the pipeline safety division of the Indiana utility regulatory commission.

(c) A company seeking a certificate of authority must also:

(1) Include a filing fee of one thousand dollars (\$1,000).

(2) Provide a signed application by a responsible officer of the company.

(3) Include a statement to verify the information submitted is true, accurate, and complete to the best of the responsible officer's knowledge and belief. (*Natural Resources Commission; 312 IAC 29-3-2*)

### **312 IAC 29-3-3 Public notice and public information meeting**

Authority: IC 14-10-2-4

Affected: IC 14-39

Sec. 3. (a) Upon determining an application for a certificate of authority is complete and accurate, the division shall provide notice to the company that includes:

(1) The determination.

(2) The date, time, and location of the public information meeting to be held under IC 14-39-1-4(d).

(b) Upon receipt of the notice under subsection (a), the company must:

(1) Place for public inspection a copy of the application in a public library located in each county in which the carbon dioxide transmission pipeline is proposed to be located.

(2) Cause a notice to be published, in the newspaper of greatest general circulation in each county in which the carbon dioxide transmission pipeline is proposed to be located, which includes:

(A) The name and address of each public library in which a copy of the application is placed under subdivision (1).

(B) The date, time, and location of the public information meeting to be held under subsection (c).

(3) Provide the division with proof of publication of any notice published under subsection (b)(2).

(4) Cause a representative of the company to be present at the public information meeting.

(c) The department shall:

(1) Conduct a public information meeting under IC 14-39-1-4(d).

**(2) Provide an opportunity at the meeting for members of the public to be briefed and to ask questions about the proposed carbon dioxide pipeline.** *(Natural Resources Commission; 312 IAC 29-3-3)*

**312 IAC 29-3-4 Division determination of application for certificate of authority**

**Authority:** IC 14-10-2-4

**Affected:** IC 14-39

Sec. 4. (a) Not later than ninety (90) days after the public information meeting referenced in section 3, the division shall determine whether the company has satisfied the requirements of IC 14-39 and this article.

(b) If the division finds the company has met the requirements of IC 14-39 and this article, the division shall approve the application.

(c) If the division finds the company has not met the requirements of IC 14-39 and this article, the division shall disapprove the application.

(d) If the division fails to make a determination with respect to the application within ninety (90) days after the public information meeting, the application is considered approved by the division. *(Natural Resources Commission; 312 IAC 29-3-4)*

**312 IAC 29-3-5 Issuance of certificate of authority**

**Authority:** IC 14-10-2-4

**Affected:** IC 14-39

Sec. 5. (a) The division shall issue a certificate of authority to the applicant if the division:

(1) approved the application under section 4(b) of this rule; or

(2) the application is considered approved under section 4(d) of this rule.

(b) A certificate of authority issued under subsection (a) must include a grant of authority:

(1) To construct and operate a carbon dioxide transmission pipeline as requested in the application.

(2) To use, occupy, and construct pipeline facilities in any designated public right-of-way for the construction and operation of the carbon dioxide transmission pipeline.

(3) To take and acquire possession by eminent domain of any property or interest in property for construction, maintenance or operation of a carbon dioxide transmission pipeline as provided under IC 14-39-1-7 through IC 14-39-1-9. *(Natural Resources Commission; 312 IAC 29-3-5)*

**312 IAC 29-3-6 Administrative review**

**Authority:** IC 14-10-2-4

**Affected:** IC 14-39

Sec. 6. A determination under IC 14-29-1-4(e)(2) is subject to administrative review under IC 4-21.5 and IC 14-10-2-3. *(Natural Resources Commission; 312 IAC 29-3-6)*

**Rule 4 Location of constructed pipeline**

**312 IAC 29-4-1 Identification of constructed carbon dioxide transmission pipeline**

**Authority:** IC 14-10-2-4

**Affected:** IC 14-39

**Sec. 1. Within one hundred eighty (180) days of completion of a carbon dioxide pipeline for which a certificate of authority is issued under this article, the carbon dioxide transmission pipeline company shall provide maps and other documentation to the division showing the route of the pipeline in Indiana. (*Natural Resources Commission; 312 IAC 29-4-1*)**

SECTION 2. THIS RULE IS EFFECTIVE AUGUST 20, 2013.